

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHARLES ALLAN DARBY,
Plaintiff,

vs.

STEVEN GRIFFIN, AND LYFT, INC.,
Defendants.

)
)
)
)
)
)
)

CASE NO. 1:21-cv-208

DEFENDANT LYFT, INC. NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332 and 1446, defendant Lyft, Inc. (“Lyft”) hereby gives notice and removes this case to the United States District Court for the Western District of Texas, Austin Division. Lyft represents the following in accordance with the requirement of 28 U.S.C. § 1446(a) for a “short and plain statement of the grounds for removal”:

BASIS FOR REMOVAL

Lyft is a defendant in a state court case in which plaintiff Charles Allan Darby (“Darby”) alleges that Steven Griffin and Lyft were negligent with respect to a motor vehicle accident that occurred on April 12, 2019. *See* Plaintiff’s Original Petition, attached hereto as Exhibit A.

Lyft is a corporation, incorporated in the State of Delaware with its principal place of business in the state of California. *See* Exhibit A at p. 2, ¶ 4. Lyft is a citizen of California,

not Texas. Darby is an individual who is a citizen of the state of Arizona. *Id.* at p. 1, ¶ 2. Lyft and Darby are thus citizens of different states.

On February 11, 2021, Lyft received the death search results, attached hereto as Exhibit I. The death search results show that Steven Russell Griffin passed away on December 28, 2019, *see* Exhibit I, which was prior to date that Darby filed suit in state court on October 14, 2020. *See* Exhibit A. Under Fifth Circuit precedent, a deceased person cannot be sued. *See Mizukami v. Buras*, 419 F.2d 1319, 1320 (5th Cir. 1969) (*per curiam*) (citing *Chorney v. Callahan*, 135 F. Supp. 35, 36 (D. Mass. 1955) (“As originally filed, this action was brought against a named defendant who was already dead. At that point the purported action was a nullity, for a dead man obviously cannot be named party defendant in an action. *Chandler v. Dunlop*, 311 Mass. 1, 5, 39 N.E.2d 969. Cf. *Pasos v. Eastern S.S. Co.*, D.C., 9 F.R.D. 279 (named plaintiff dead when complaint was filed). Hence the attempted substitution of the administrator was ineffective as such. There was no action really existent in which he could be substituted.”)). As a result, Griffin is not to be considered for diversity jurisdiction purposes.

Darby alleges more than \$1,000,000 in damages, thereby satisfying the amount-in-controversy requirement. *See* Exhibit A at p. 2, ¶ 5. This Notice of Removal is timely filed, as it is being filed within thirty days after receipt by Lyft of the death search results attached hereto as Exhibit I from which Lyft first ascertained that the case is one which is or has become removable as required by 28 U.S.C. § 1446(b)(3).

As required by 28 U.S.C. § 1446(a), a copy of all records and proceedings from Travis County, Texas, are attached hereto as exhibits or will be timely supplemented. Exhibit A is Plaintiff's Original Petition. In accordance with 28 U.S.C. § 1446(d), Lyft filed written notice of this removal with the Clerk of the Court of Travis County, Texas. A copy of this Notice of Removal and the written notice of the same also are being served upon Darby.

EFFECTUATION OF REMOVAL

Removal is proper under 28 U.S.C. §§ 1332 and 1441 because the amount in controversy, exclusive of interest and costs, exceeds \$75,000 and the action is between citizens of different states. Lyft thus hereby removes this action to the United States District Court for the Western District of Texas, Austin Division. Venue is proper in this Court pursuant to 28 U.S.C. § 1446(a), as the United States District Court for the Western District of Texas, Austin Division, is the district in which Plaintiff's Original Petition was filed.

WHEREFORE, Lyft, Inc. hereby removes this action to the United States District Court for the Western District of Texas, Austin Division.

Respectfully submitted,



Bryan D. Pollard
State Bar No. 00795592
FISHERBROYLES, LLP
Highland Park Place
4514 Cole Avenue, Suite 600
Dallas, Texas 75205
bryan.pollard@fisherbroyles.com
Telephone: (214) 984-7153
Facsimile: (214) 279-7192

William J. Akins
State Bar No. 24011972
william.akers@fisherbroyles.com
Telephone: (214) 924-9504

Bradley B. Bush
State Bar No. 24057787
bradley.bush@fisherbroyles.com
Telephone: (512) 766-6226

FISHERBROYLES, LLP
100 Congress Avenue, Suite 2000
Austin, Texas 78701
Facsimile: (214) 481-3768

ATTORNEYS FOR DEFENDANT LYFT, INC.

INDEX TO DOCUMENTS

DATE FILED	DESCRIPTION	EXHIBIT #
10/14/20	Plaintiff's Original Petition	A
11/07/20	Issued Citation for Steven Griffin	B
11/07/20	Issued Citation for Lyft, Inc.	C
01/04/21	Defendant Lyft, Inc.'s Original Answer	D
01/07/21	Executed Citation for Lyft, Inc.	E
01/29/21	Plaintiff Charles Allan Darby's Notice of Filing Medical and Billing Record Affidavits	F
02/08/21	Rule 11 Agreement	G
03/00/21	Case Docket Sheet	H
	Bastrop Death Search Results - Defendant Steven Russell Griffin date of death 12/28/19	I